IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 282 of 1982

For Approval and Signature:

HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HASMUKHLAL & CO.,

Versus

THAKER KANTILAL V

Appearance:

1. Second Appeal No. 282 of 1982

MR SURESH M SHAH for Petitioner No. 1

TANNA ASSOCIATES for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 07/04/2004

ORAL JUDGEMENT

The appellant in this second appeal under sec.

100 of the Code of Civil Procedure is the original plaintiff. He sued the respondents to recover Rs. 8000/with interest of 1%. The trail court on appreciation of evidence held that the plaintiff had failed to prove that Rs. 5000/- were due and payable by defendant no. 1 as alleged in para-30 of the plaint and the plaintiff had failed to prove that Rs. 3000/- were due and payable by defendants no. 1 and 2 as alleged in para - 14 and 16 of the plaint. However, the trial court held that the plaintiff was entitled to recover Rs. 5000/- from defendant no. 2. The trial court, therefore, decreed the suit for Rs. 5000/- against defendant no. 1 and dismissed the suit against defendant no. 2 for the claim of Rs. 3000/-. The suit was entirely dismissed against defendant no. 1.

On appeal, the ld. District Judge, Jamnagar confirmed the finding of the trial court and dismissed the appeal.

At the time of admission, following substantial questions of law are framed:

1) Whether in view of Exh. 68 surity bond in view of the evidence of the witness Surendrakumar which has been accepted by the courts below, can the decree for Rs. 5000/- as and by way of reimbursement to the plaintiff in view of payment made by it to the shroot's firm as surety for the defendant.

2) Whether in the facts and circumstances of the case in view of the fact that cheque of Rs. 3000/- given by the defendant no. 2 has not been encashed and has been refused, the plaintiff is entitlted to get the decree of Rs. 3000/- against both or any of the defendants?

3) whether in the facts and circumstances of the case suit of the plaintiff should have been decreed?

However, the findings recorded by the courts below are based on appreciation of evidence and they cannot be said to be perverse or based on no evidence at all. NO substantial question of law as such arises. There is no merit in the appeal and the same is dismissed. No order as to costs.

(M.C. PATEL, J.)
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